

**AMENDMENTS TO THE DRAWINGS**

The attached sheets of drawings include formal drawings of FIGS. 1-9B. These sheets, numbered sheets 1-11 and including FIGS. 1-9B, replace original sheets 1-11, which include FIGS. 1-9B. FIGS. 1-9B have been replaced to comply with 37 C.F.R. §1.84(I).

Attachment: Replacement Sheets 1-11

### **REMARKS**

The pending Office Action addresses claims 1-23, however claims 4, 6, 11, and 17-23 are withdrawn from consideration. Applicant notes that the Examiner forgot to list claim 15 as being withdrawn. Moreover, claims 17-23 were cancelled in the previous response. Accordingly, claims 1-16 are pending, with claims 4, 6, 11, and 15 being withdrawn, and remaining claims 1-3, 5, 7-10, 12-14, and 16 being rejected. Reconsideration and allowance is respectfully requested based on the amendments and remarks submitted herewith.

#### ***Amendments to the Drawings***

Applicant submits the attached replacement drawings for FIGS. 1-9B, sheets 1-11, which are formal copies of previously filed FIGS. 1-9B in order to comply with 37 C.F.R. §1.84(l). No new matter is added.

#### ***Amendments to the Claims***

Applicant amends claim 1 to clarify that the implant-gripping member a proximal portion with a longitudinal axis, and that the a rod-engaging member is slidably coupled to the implant-gripping member along the longitudinal axis of the proximal portion. Claim 12 is amended to clarify that the first and second components are slidably coupled along a longitudinal sliding axis. Support for these amendments can be found throughout the specification, for example in paragraph 0027. No new matter is added.

#### ***Rejections Pursuant to 35 U.S.C. §102***

##### ***Rejections Pursuant to Hayes I***

The Examiner rejects claims 1-3, 5, 12, 13, and 16 pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,364,397 of Hayes et al. (hereinafter "Hayes I").

Independent claim 1 recites a spinal rod approximator that includes a rod-engaging member that is slidably coupled to an implant-gripping member along a longitudinal axis of a proximal portion of the implant-gripping member. Independent claim 12 similarly recites first and second components that are coupled to one another along a longitudinal sliding axis. Hayes I does not teach or even suggest a device having two components that slide longitudinally related to one another, as required by claims 1 and 12. Rather, as shown in Figures 3 and 5 of Hayes I, the implant-gripping portion and the rod-engaging portion are pivotally coupled to one another at

pivot point 16. Neither component slides longitudinally. Accordingly, independent claims 1 and 12, as well as claims 2-3, 5, 13, and 16 which depend therefrom, distinguish over Hayes I and represent allowable subject matter.

*Rejections Pursuant to Hayes II*

The Examiner also rejects claims 1, 2, 7-10, and 12-16 pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,020,519 of Hayes et al. (hereinafter "Hayes II"). Applicant notes that the Office Action references U.S. Patent No. 5,202,519 of Khare entitled "Isomerization Process and Catalyst Therefor." Applicant assumes the Examiner intended to refer to U.S. Patent No. 5,020,519 of *Hayes et al.* (hereinafter Hayes II).

As noted above, Applicant amends claims 1 and 12 to recite that the two components are slidably coupled to one another along a longitudinal axis. Like Hayes I, Hayes II does not teach a device having such a configuration. Rather, the implant-gripping portion and the rod-engaging portion are pivotally coupled to one another at pivot point 42. Accordingly, independent claims 1 and 12, as well as claims 2, 7-10, and 13-16 which depend therefrom, distinguish over Hayes I and represent allowable subject matter.

***Conclusion***

Applicant submits that all claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

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Respectfully submitted,

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